IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9989 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANMOHANBHAI CHAMANLAL PAREKH - Petitioner(s)
Versus
GUJ.STATE CO-OP.TRIBUNAL & ORS & 5 - Respondent(s)

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Appearance :

MR ASHWIN L SHAH for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 3.
MR GHANSHYAM AMIN for Respondent(s) : 4,
MR GN SHAH for Respondent(s) : 5,
OFFICIAL LIQUIDATOR for Respondent(s) : 6,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 10/07/2006

ORAL JUDGMENT

1. By way of this petition under Article 227 of the Constitution of India, the petitioner –

original guarantor has prayed for an appropriate writ, direction or order declaring that the respondent NO.4 bank is not entitled to proceed with Lavad Suit No.2233 of 1983 as against the petitioner pending before the Board of Nominees, Ahmedabad. It is also further prayed for an appropriate order declaring that the proceedings in the above referred Lavad Suit No.2233 of 1983 pending before the learned Board of Nominees, Ahmedabad are liable to be stayed against the petitioner. A further prayer is also made to quash and set aside the order dated 21.8.1993 passed by the learned Gujarat State Cooperative Tribunal passed in Revision Application No.1/ 1993. The respondent No.5 – mill company (now under liquidation) was the principal debtor. The petitioner was the guarantor and respondent No.4 bank is the principal creditor. Lavad Suit came to be filed by the respondent No.4 bank against the principal debtor as well as the the petitioner i.e. guarantor. The proceedings were

initiated under the provisions of Section-22 of the Sick Industrial Companies (Special Provisions) Act [hereinafter referred to as the "SICA" for short] and therefore, proceedings against the principal debtor were required to be stayed as contemplated under Section-22 of the aforesaid Act. It was the contention on behalf of the petitioner that as the liability of the petitioner was because of the respondent No.5 i.e. principal debtor and as the proceedings against the principal debtor were required to be stayed as provided under Section-22 of the SICA, the proceedings against the guarantor cannot be proceeded any further and therefore, the present Special Civil Application was filed. It is required to be noted that during the pendency of the present Special Civil Application, the respondent No.5 company is ordered to be wound up under the provisions of the Companies Act, 1956 and therefore, Section-22 of SICA will not be applicable now and aforesaid ground is not

available to the petitioner now.

2. Shri Ashwin Shah, learned advocate appearing on behalf of the petitioner has submitted that there was settlement between the petitioner and the respondent No.5 and therefore, the liability of the petitioner would not be there and there cannot be any further proceedings and decree against the petitioner. All these questions are required to be considered by the learned Board of Nominees. What is the consequences of the settlement, if any, between the respondent No.4 bank and the principal debtor and whether liability of the petitioner as guarantor still continues, are all questions require to be considered and dealt with by the learned Board of Nominees. Under the circumstances, no opinion is expressed with regard to the same and the parties are left to agitate their issues and/or pointed question before the learned Board of Nominees at the time of deciding the Lavad Suit. In view of

the above, more particularly, when the restrictions under Section-22 of the SICA are not there now and in view of the fact that the respondent No.5 mill-company is already ordered to be wound up, the main basis and ground of the present Special Civil Application will not survive and hence the present Special Civil Application is required to be dismissed and is accordingly dismissed with above liberty.

3. Since Lavad Suit in question i.e. Lavad Suit No.2233 of 1983 is of the year 1983, the learned Board of Nominees, Ahmedabad is directed to decide and dispose of the aforesaid Lavad Suit No.2233 of 1983 as early as possible preferably within a period of six months from the date of receipt of this order.

4. Rule is discharged. Ad-interim relief granted early stands vacated forthwith.

However, there shall be no order as to costs.

[M.R.Shah, J.]

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